



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	01/03/05	Bill No:	AB 68
Tax:	Sales and Use	Author:	Montanez
Related Bills:			

This analysis will only address the bill's provisions that impact the Board.

BILL SUMMARY

This bill would enact the Car Buyer's Bill of Rights to, among other things, provide that purchasers of used vehicles may cancel the sales contract for a period up to three days after the sale, as long as the vehicle is returned in substantially the same condition and has not been driven more than 250 miles. For sales tax purposes, this bill would allow a car dealer to return a portion of the sales tax to the customer, unlike current law.

ANALYSIS

Current Law

The Sales and Use Tax Law imposes a sales or a use tax on the gross receipts from the sale of, and on the sales price of, tangible personal property, unless specifically exempted or excluded by statute. Sections 6011 and 6012 of the Sales and Use Tax Law, define "sales price" and "gross receipts" as the total amount of the sale, lease or rental price, without any deduction on account of the cost of materials used, labor or service costs, interest charged, losses, or any other expenses related to the sale of the property. However, the law expressly excludes from the definition of "gross receipts" and "sales price" property that is returned by the customer when the entire amount is refunded either in cash or credit. A refund or credit of the entire amount is deemed to be given when the purchase price and sales tax, less rehandling and restocking costs, if any, are refunded or credited to the customer. Therefore, unless the entire purchase price is returned to the customer, the entire amount of sales tax is due on the original sales price.

Regulation 1655, *Returns, Defects and Replacements*, interprets and makes specific the laws governing returned merchandise. Regulation 1655 specifies the conditions that must be met to claim a deduction for returned merchandise. Those requirements are:

- The original sale must have been reported as part of total taxable sales.
- The full sales price, including sales tax, has been refunded either in cash or credit.
- The customer in order to obtain the refund or credit was not required to purchase other property at a price greater than the amount charged for the property returned.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

A refund or credit of the entire amount is deemed to be given when the purchase price and sales tax, less rehandling and restocking costs, are refunded or credited to the customer. The amount withheld for rehandling and restocking may not exceed the actual cost of rehandling and restocking the returned merchandise. However, in lieu of using the actual cost for each transaction, the amount withheld for rehandling and restocking may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle (generally one year).

Proposed Law

This bill would enact the Car Buyer's Bill of Rights. This bill would provide a 3-day "cooling off" period for sales of used vehicles, except recreational vehicles, consignment sales, or vehicles sold "as is." This bill would add Section 2982.2 to the Civil Code to do the following:

- 1) Provide that the buyer of any used motor vehicle (except recreational vehicles, consignment sales, or vehicles sold "as is") has the right to cancel a motor vehicle sale contract by the close of the seller's place of business on the third day after delivery of the vehicle, if the vehicle has not been driven more than 250 miles and is returned in substantially the same condition, excluding normal wear and tear.
- 2) Provide that the buyer must give written notice of cancellation to the seller within the 3-day period.
- 3) Upon return of the vehicle, provide that the seller make a full refund, including that portion of the sales tax attributable to amounts excluded pursuant to Section 6012.3 of the Sales and Use Tax Law, minus the following allowable deductions:
 - A reasonable offset for mileage added to the odometer after delivery, calculated by dividing the purchase price of the vehicle by 120,000 miles, and multiplying that amount by the number of miles added to the odometer after delivery;
 - A restocking fee of either 2.5 percent of the purchase price or \$500, whichever is less, for vehicles with a purchase price of up to \$60,000, or 2.5 percent of the purchase price for vehicles with a purchase price greater than \$60,000.
 - Reasonable reimbursement for any nonsubstantial damage occurring during the buyer's possession of the vehicle, such as stains, scratches, or missing parts or accessories.
- 4) Provide that a "full refund" includes the vehicle the buyer left with the seller as a downpayment or trade-in. If the seller has sold the motor vehicle, the "full refund" shall include the fair market value of the motor vehicle left as a downpayment or trade-in, or its value stated in the contract, whichever is greater.
- 5) Defines "seller" as a person primarily engaged in the business of selling or leasing motor vehicles under any motor vehicle sale contract, including a conditional sale contract. "Seller" does not include a private individual who is not required to be licensed to sell vehicles in California.

This bill would also add Section 6012.3 of the Sales and Use Tax Law to provide that "gross receipts" and "sales price" do not include that portion of the sales price returned to the buyer of a used motor vehicle pursuant to Section 2982.2 of the Civil Code.

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Background

Current law requires motor vehicle dealers to make certain disclosures to buyers, including that California law does not provide for a “cooling off” period or other cancellation period for vehicle sales. Under the California Lemon Law (Civil Code section 1793.2), a manufacturer is required to provide restitution or a replacement to the buyer of a new vehicle when the vehicle is a “lemon.”

Some vehicle dealers are already providing buyers with a right to return period. General Motors offers a 3-day or 150 mile “Satisfaction Guarantee” on their GM Certified used vehicles. CarMax offers a 5-day Money-Back Guarantee with every purchase of a used car or truck. Rydell’s Automotive Group in San Fernando Valley also provides a 7-day return policy.

Last year, the author of this bill introduced an identical bill, AB 1839. Supporters of AB 1839 argued that the 3-day cooling off period would alleviate many of the problems associated with used car sales, such as misrepresentations regarding the vehicle’s condition and being charged a price in excess of a fair market price. Opponents argued that the cooling off period represented an unwarranted intrusion into private contracts and that the reimbursement amounts would not adequately compensate the dealer for the costs of unwinding a transaction (i.e., paperwork, cancellation of financing arrangements, and inspection and/or reconditioning of the vehicle).

Though the 3-day cooling off period was amended out of the bill before being sent to the Governor, he vetoed the bill. The Governor’s veto message states, in part:

“The terms contained in the bill need to be further addressed and refined. If the goal is consumer protection, then there needs to be a level playing field with standards and terms based on objectivity and clarity, which will provide true benefit to the consumer.

My concerns with this bill include the vague definitions of certified used cars, qualified technician and the new definitions it places into law of sellers and dealers. These terms will likely cause the Department of Motor Vehicles to be involved in costly investigations over unenforceable and conflicting definitions.”

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Consumers for Auto Reliability and Safety in an effort to provide a collection of consumer protections with respect to sales of motor vehicles.
2. **Deduction for returned vehicles.** This bill would add Section 6012.3 to the Sales and Use Tax Law to provide that “gross receipts” and “sales price” do not include that portion of the sales price returned to the buyer of a used motor vehicle. This provision would allow the dealer to claim an exclusion from tax similar to the deduction for returned merchandise.

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Under existing law, a seller can claim a deduction for returned merchandise if, among other things, the full sales price, including sales tax charges, is returned to the buyer. In these transactions, the seller is not required to return the full sales price to the buyer. A seller returning less than the full sales price would not be entitled to claim any deduction for the returned merchandise. The addition of this provision, however, allows the seller to claim a deduction in the amount of the sales price that is actually returned.

COST ESTIMATE

Administrative costs would be incurred in preparing and mailing a special notice to motor vehicle dealers, revising publications, and answering potentially numerous inquiries. A detailed cost estimate is pending.

REVENUE ESTIMATE

A formal revenue estimate is pending. However, since the length of time to cancel the sales contract and return the vehicle to the dealer is only three days, this proposal may have only minimal impact on revenue, if any. In many cases, the sale of the vehicle will not have been reported to the Board. Since the return of the vehicle would cancel the original transaction, the additional amount of sales tax collected on certain charges made by the dealer (i.e., mileage offset, restocking fee, and reimbursement for nonsubstantial damage) would be insignificant.

Revenue Summary

This proposal may have only minimal impact on revenue, if any.

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